AMENDMENT TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on May 17, 2024, effective September 1, 2024

Rule 4.553. Qualifications for appointed counsel for claims under section 1473(e) in noncapital case ..... 2
Rule 4.551. Habeas corpus proceedings ..... 3
**Rule 7.2210. General provisions ..... 7**
Rule 7.2221. Papers to be filed (§ 5975) ..... 10
Rule 7.2225. ~~Petitioner~~ Persons who may file petition (§§ 5974, 5978) ..... 10
Rule 7.2230. Counsel for respondent (§§ 5976(c), 5977(a)(3)(A), (a)(5)(C) & (b)(1)) ..... 11
Rule 8.385. Proceedings after the petition is filed ..... 11
Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court 12
Rule 10.603. Authority and duties of presiding judge ..... 13

**Rule 4.553. Qualifications for appointed counsel for claims under section 1473(e) in noncapital case**

**(a) Purpose**

This rule defines the minimum qualifications for appointment of counsel for a petition for writ of habeas corpus claim filed under section 1473(e) in a noncapital case in the superior court. These minimum qualifications are designed to promote competent representation in habeas corpus proceedings related to the California Racial Justice Act of 2020 and to avoid unnecessary delay and expense by assisting the courts in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether a person received effective assistance of counsel. An attorney is not entitled to appointment simply because the attorney meets the minimum requirements.

**(b) Qualifications**

To be eligible as appointed counsel, an attorney must:

(1) Be an active member of the State Bar of California.

(2) Have experience as one of the following:

(A) Counsel of record for a petitioner in at least two habeas corpus proceedings filed in the Supreme Court, a Court of Appeal, a superior court, or a federal court.

(B) Counsel of record in at least two criminal appeals filed in the Supreme Court, a Court of Appeal, or a federal appellate court.

(C) Have the experience required to have represented the individual in the underlying class of criminal case.

(3) Be familiar with the practices and procedures of California criminal courts.

(4) Demonstrate proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy.

(5) Have completed a minimum requirement of 10 hours of training on the California Racial Justice Act of 2020, including training on implicit bias and on habeas corpus procedure, approved for Minimum Continuing Legal Education credit by the State Bar of California.

**(c) Alternative requirements**

The court may appoint an attorney who does not meet all the qualifications stated in (b)(1)–(4) if the attorney meets the qualifications of (b)(5) and demonstrates the ability to provide competent representation to the petitioner. If the court appoints counsel under this subdivision, it should state on the record the basis for finding counsel qualified.

**(d) Public defender appointments**

When the court appoints the public defender under section 987.2, the public defender should assign an attorney from that office or agency who meets the qualifications described in (b) or assign an attorney who the public defender determines would qualify under (c).

*Rule 4.553 adopted effective September 1, 2024.*

**Rule 4.551. Habeas corpus proceedings**

**(a) Petition; form and court ruling**

(1) Except as provided in (2), the petition must be on the *Petition for Writ of Habeas Corpus* (form HC-001).

(2) For good cause, a court may also accept for filing a petition that does not comply with (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in the *Petition for Writ of Habeas Corpus* (form HC-001), including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.

(3) If a petition raises a claim under Penal Code section 745(a), the petition must include whether the petitioner requests appointment of counsel and whether the petitioner can afford counsel.

(4) If a petitioner has an unadjudicated habeas corpus petition pending in the superior court, the petitioner may amend the existing petition with a claim the petitioner's conviction or sentence was in violation of Penal Code section 745(a).

~~(3)~~(5)

(A) On filing, the clerk of the court must immediately deliver the petition to the presiding judge or ~~his or her~~ their designee. The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.

(B) When an unadjudicated habeas corpus petition is amended to include a claim under section 745, or otherwise amended with leave of court, the time to rule on a petition for writ of habeas corpus is extended to 60 days from the date the amended petition was filed.

~~(B)~~(6) If the court fails to rule on the petition (or amended petition) within 60 days of its filing, the petitioner may file a notice and request for ruling.

~~(i)~~(A) The petitioner's notice and request for ruling must include a declaration stating the date on which any ~~the~~ petition or amended petition was filed, ~~and~~ the date of the notice and request for ruling, and ~~indicating~~ the fact that the petitioner has not received a ruling on the petition. A copy of the original (and the amended) petition must be attached to the notice and request for ruling.

~~(ii)~~(B) If the presiding judge or ~~his or her~~ their designee determines that the notice is complete and the court has failed to rule, the presiding judge or ~~his or her~~ their designee must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition before the date the petition is calendared for decision, the matter may be taken off calendar.

(7) If a petition raises a claim under Penal Code section 745(a) that is based on conduct or statements by a judge, the judge must disqualify themselves from proceedings under section 745.

~~(4)~~(8) For the purposes of (a)~~(3)~~(5), the court rules on the petition by:

(A) Issuing an order to show cause under (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under (b).

~~(5)~~(9) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under (b).

*(Subd (a) amended effective September 1, 2024; previously amended effective January 1, 2002, January 1, 2004, January 1, 2007, January 1, 2009, and January 22, 2019.)*

**(b) Informal response**

* * *

**(c) Order to show cause**

(1) The court must issue an order to show cause if the petitioner has made a prima facie showing that ~~he or she~~ the petitioner is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if ~~his or her~~ the petitioner's factual allegations were proved. If so, the court must issue an order to show cause.

~~(2) On issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.~~

~~(3)~~(2) An order to show cause is a determination that the petitioner has made a showing that ~~he or she~~ they may be entitled to relief. It does not grant the relief sought in the petition.

*(Subd (c) amended effective September 1, 2024; adopted effective January 1, 2002.; previously amended effective January 1, 2007.)*

**(d) Appointment of counsel**

(1) On issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

(2) When a petition raises a claim under Penal Code section 745(a) and requests appointment of counsel, the court must appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests that counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

*(Subd (d) adopted effective September 1, 2024.)*

**~~(d)~~(e) Return**

* * *

*(Subd (e) relettered effective September 1, 2024; repealed and adopted as subd (d) effective January 1, 2002; previously amended effective January 1, 2004.)*

**~~(e)~~(f) Denial**

* * *

*(Subd (f) relettered effective September 1, 2024; adopted as subd (b) effective January 1, 1982; previously amended and relettered as subd (e) effective January 1, 2002.)*

**~~(f)~~(g) Evidentiary hearing; when required**

(1) Except as provided in (2), within 30 days after the filing of any denial or, if none is filed, after the expiration of the time for filing a denial, the court must either grant or deny the relief sought by the petition or order an evidentiary hearing. An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact. The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.

(2) If the court issues an order to show cause on a claim raised under Penal Code section 745(a), the court must hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing with remote technology, unless counsel indicates the defendant's presence in court is needed.

*(Subd (g) amended and relettered effective September 1, 2024; adopted as subd (c) effective January 1, 1982; previously amended and relettered as subd (f) effective January 1, 2002 )*

**~~(g)~~(h) Reasons for denial of petition**

(1) Except as provided in (2), any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient.

(2) If the court determines that the petitioner has not established a prima facie showing of entitlement to relief for a claim raised under Penal Code section 745(a), the court must state the factual and legal basis for its conclusion on the

record or issue a written order detailing the factual and legal basis for its conclusion.

*(Subd (h) amended and relettered effective September 1, 2024;adopted as subd (e) effective January 1, 1982; previously amended and relettered as subd (g) effective January 1, 2002.)*

**~~(h)~~(i) Extending or shortening time**

* * *

*(Subd (i) amended and relettered effective September 1, 2024; adopted as subd (f) effective January 1, 1982; previously amended and relettered as subd (h) effective January 1, 2002.)*

*Rule 4.551 amended effective September 1, 2024; adopted as rule 260 effective January 1, 1982; previously renumbered as rule 4.500 effective January 1, 2001; previously amended and renumbered effective January 1, 2002; previously amended effective January 1, 2004, January 1, 2007, January 1, 2009, and January 22, 2019.*

**Advisory Committee Comment**

The court must appoint counsel on the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus proceeding challenging the underlying conviction. (*Charlton v. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if there is no public defender available, for indigents in criminal proceedings.

The issue of whether the prima facie showing for a petition for writ of habeas corpus under section 1473(e) is the same as in section 745(h)(2) or defined in subdivision (c)(1) of this rule (see *In re Marquez* (2007) 153 Cal.App.4th 1, 11) is unresolved.

**Subdivision (a)(4) and (7).** The committee's revisions reflect the language in section 1473(e) and are not intended to limit a court's discretion and authority in habeas corpus proceedings that do not include claims under section 745.

**Rule 7.2210. General provisions**

**(a)** * * *

**(b) Access to records (§ 5977.4(a))**

All documents filed and all evaluations, reports, and other documents submitted to the court in CARE Act proceedings are confidential, notwithstanding disclosure of their contents during a CARE Act hearing. No person other than the respondent, the respondent's counsel, the county behavioral health director or the director's designee, counsel for the director or the director's designee, and, with the respondent's express consent given in writing or orally in court, the respondent's supporter may inspect or copy the case records without a court order.

*(Subd (b) amended effective September 1, 2024.)*

**(c) Sealing of records (§ 5976.5(e))**

(1) A motion to seal records under section 5976.5(e) must specify the records to which it applies.

(2) The respondent must serve the motion to seal on the other parties not later than the close of the next court day after the motion is filed.

(3) Any opposition to the motion must be filed within 10 court days of the date of service in (2).

(4) The extensions of time in Code of Civil Procedure sections 1010.6 and 1013 apply to motions under section 5976.5(e).

(5) The court may grant the motion without a hearing or, if timely opposition is filed, set a hearing on the motion, and provide at least five court days' notice to all parties.

(6) *Order*

(A) If the court grants the motion and the sealed record is in paper format, the clerk must place on the envelope or container of the record a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)." If the sealed record is in electronic form, the clerk must file the court's order, maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(B) The order must state whether any person other than the court is authorized to inspect the sealed record.

(7) Rules 2.550 and 2.551 do not apply to motions to seal records under section 5976.5(e).

*(Subd (c) adopted effective September 1, 2024.)*

**(d) Respondent within juvenile court jurisdiction (§ 5977.4(c))**

(1) *Informing the juvenile court*

Upon learning that a respondent is within a juvenile court's dependency, delinquency, or transition jurisdiction, the CARE Act court must inform the juvenile court that a CARE Act petition has been filed on behalf of that respondent. The court may communicate this information in any suitable manner.

(2) *Concurrent jurisdiction with juvenile court*

The CARE Act court is not precluded by statute from exercising jurisdiction over a respondent who is within a juvenile court's dependency, delinquency, or transition jurisdiction. The CARE Act court and the juvenile court may, therefore, exercise concurrent jurisdiction over such a respondent.

*(Subd (d) adopted effective September 1, 2024.)*

**(e) Notification of respondent's attorney in related proceedings (§ 5977.4(c))**

If the CARE Act court learns that the respondent has been referred from a proceeding identified in section 5978 or that the respondent is within a juvenile court's dependency, delinquency, or transition jurisdiction, the court must order the county agency to:

(1) Notify the respondent's attorney, if any, in the related case that a CARE Act petition has been filed on behalf of the respondent; and

(2) Provide the attorney with the contact information of the respondent's CARE Act attorney, if known.

*(Subd (e) adopted effective September 1, 2024.)*

**(f) No communication of further information (§ 5976.5)**

Subdivisions (d) and (e) of this rule do not authorize the communication of information other than that identified in those subdivisions absent an express waiver by the respondent.

*(Subd (f) adopted effective September 1, 2024.)*

*Rule 7.2210 amended effective September 1, 2024; adopted September 1, 2023.*

**Advisory Committee Comment**

**Subdivisions (d) and (e).** As used in these subdivisions, the phrase "within a juvenile court's dependency, delinquency, or transition jurisdiction" refers to a respondent whom a juvenile court has found to be described by Welfare and Institutions Code section 300, 450, 601, or 602 and who is currently within the juvenile court's jurisdiction based on one of those descriptions. The term does not refer to any other party to a juvenile court proceeding.

**Subdivision (d)(2).** The subdivision is intended to describe the effect of existing law. Neither the juvenile court law (Welf. & Inst. Code, §§ 200–987) nor the CARE Act precludes concurrent jurisdiction or, conversely, confers exclusive jurisdiction on either court over matters relating to the mental health treatment of persons who meet the statutory jurisdictional criteria of both.

## Rule 7.2221. Papers to be filed (§ 5975)

~~**(a) Petition packet (§ 5975)**~~

A petition to commence CARE Act proceedings must be made on *Petition to Commence CARE Act Proceedings* (form CARE-100). The petition must include either:

(1) A completed Mental Health Declaration—CARE Act Proceedings (form CARE-101); or

(2) The evidence described in section 5975(d)(2).

*(Subd (a) amended effective September 1, 2024.)*

~~**(b) Acceptance of papers for filing**~~

~~On receipt of a petition, the clerk must file the petition packet, assign a case number, and place the packet in a confidential file.~~

*Rule 7.2221 amended effective September 1, 2024; adopted September 1, 2023.*

## Rule 7.2225. ~~Petitioner~~ Persons who may file petition (§§ 5974, 5978)

~~**(a) Persons who may file petition**~~

~~A petition to commence proceedings under the CARE Act may be filed by any of the persons identified in section 5974 or, in the circumstances specified therein, section 5978.~~ Any person identified in section 5974 may file a petition to begin CARE Act proceedings. If a petition is based on a referral authorized by section 5978, only the person designated in that section may file the petition.

*(Subd (a) amended effective September 1, 2024.)*

**~~(b) Petitioner on referral under Penal Code section 1370.01~~**

~~On referral by a court under Penal Code section 1370.01, an agency designated by the county will be the petitioner.~~

*Rule 7.2225 amended effective September 1, 2024; adopted September 1, 2023.*

**Rule 7.2230. Counsel for respondent (§§ 5976(c), 5977(a)(3)(A), (a)(5)(C) & (b)(1))**

**(a) Appointment**

If the court finds that the petitioner has made a prima facie showing that the respondent is or may be a person described by section 5972, the court must~~, in accordance with procedures established by local rule~~:

(1) Appoint a qualified legal services project as counsel to represent the respondent; or

(2) If no qualified legal services project has agreed to accept CARE Act appointments from the court, appoint a public defender or an attorney acting in that capacity to represent the respondent.

*(Subd (a) amended effective September 1, 2024.)*

**(b)–(c)** * * *

*Rule 7.2230 amended effective September 1, 2024; adopted September 1, 2023.*

**Rule 8.385. Proceedings after the petition is filed**

**(a)–(e)** * * *

**(f) Return to the reviewing court**

If the return is ordered to be filed in the Supreme Court or the Court of Appeal, rule 8.386 applies. ~~and the court in which the return is ordered filed must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.~~

*(Subd (f) was amended effective September 1, 2024.)*

**(g) Appointment of counsel**

(1) If the return is ordered to be filed in the Supreme Court or the Court of Appeal, the court in which the return is ordered filed must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

(2) When a petition raises a claim under Penal Code section 745(a) and requests appointment of counsel, the court must appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests that counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

*(Subd (g) was adopted effective September 1, 2024.)*

*Rule 8.385 amended effective September 1, 2024; adopted effective January 1, 2009; previously amended effective January 1, 2012, January 1, 2014, and January 1, 2016.*

**Advisory Committee Comment**

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**Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court**

**(a)–(e)** * * *

**(f) Evidentiary hearing ordered by the reviewing court**

(1) An evidentiary hearing is required if, after considering the verified petition, the return, any traverse, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact.

(2) If the court issues an order to show cause on a claim raised under Penal Code section 745(a), the court must hold an evidentiary hearing unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing with remote technology, unless counsel indicates the defendant's presence in court is needed.

~~(2)~~(3) The court may appoint a referee to conduct the hearing and make recommended findings of fact.

*(Subd (f) amended effective September 1, 2024.)*

**(g)** * * *

*Rule 8.386 amended effective September 1;2024; adopted effective January 1, 2009; previously amended effective January 1, 2014, and January 1, 2016.*

**Rule 10.603. Authority and duties of presiding judge**

**(a)–(b)** ***

**(c) Duties**

(1) ***

(2) *Judicial schedules*

(A) ***

(B) The plan should take into account ~~the principles contained in standards 10.11–10.13~~ rules 10.451, 10.452, and 10.462–10.469 (on judicial education) and standard 10.5 (on community activities) of the Standards of Judicial Administration.

(C)–(I) ***

(3)–(11) ***

*(Subd (c) amended effective September 1, 2024; previously amended effective January 1, 2001, January 1, 2002, January 1, 2006, July 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2016.)*

**(d)** ***

*Rule 10.603 amended effective September 1, 2024; adopted as rule 6.603 effective January 1, 2001; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2002, January 1, 2006, July 1, 2006, July 1, 2010, and January 1, 2016.*